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AUG 18 2010

DISCIPLINARY COMMISSION OF THE
SUPREME COURT OF ARIZONA

BEFORE THE DISCIPLINARY COMMISSION
OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER)
OF THE STATE BAR OF ARIZONA)

No. 09-1109

CHESTER R. LOCKWOOD JR.,)
Bar No. 003348)

DISCIPLINARY COMMISSION
REPORT

RESPONDENT.)
_____)

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on August 14, 2010, pursuant to Rule 58, Ariz.R.Sup.Ct., for consideration of the Hearing Officer's Report filed June 10, 2010, recommending acceptance of the Tender of Admissions and Agreement for Discipline by Consent ("Tender") and Joint Memorandum ("Joint Memorandum") providing for a six month suspension retroactive to March 8, 2010,¹ one year of probation with the State Bar's Member Assistance Program ("MAP") to be served concurrent with Respondent's existing probation in SB-09-0024-D (2009), and payment of costs with 30 days of the date of the final Judgment and Order.

Decision

Having found no facts clearly erroneous, the five members² of the Disciplinary Commission unanimously recommend accepting and incorporating the Hearing Officer's findings of fact, conclusions of law, and recommendation for a six month suspension retroactive to March 8, 2010, one year of probation (MAP) to be served concurrent with

¹ The date that Respondent voluntarily transferred to inactive status with the State Bar's Membership Department.

² Commissioners Belleau, Flores, Horsley and Osborne did not participate in these proceedings.

Respondent's probation in SB-09-0024-D (2009), and payment of costs of these disciplinary proceedings within 30 days of the date of the final Judgment and Order, including any costs incurred by the Disciplinary Clerk's office.³ The terms of probation are as follows:

Terms of Probation

1. The probation period will begin to run at the time of the final Judgment and Order and shall end one year from the final Judgment and Order.

2. Respondent shall contact the director of MAP within 30 days of the date of the Judgment and Order. Respondent shall submit to a one-time MAP assessment to determine his need for any services and/or assistance. If deemed necessary by MAP, the director of MAP shall develop "Terms and Conditions of Probation" and the terms shall be incorporated herein by reference. Respondent shall be responsible for any costs associated with MAP.

3. In the event Respondent fails to comply with any of the terms of probation recommended by the Hearing Officer and approved by the Disciplinary Commission and Supreme Court at the time of the reinstatement proceedings, and the State Bar receives information about his failure, bar counsel will file a Notice of Non-Compliance with the imposing entity, pursuant to Ariz. R. Sup. Ct., Rule 60(a)(5). The imposing entity may refer the matter to a hearing officer to conduct a hearing at the earliest practical date, but in no event later than thirty days following receipt of the notice, and will determine whether the terms have been breached and, if so, will recommend appropriate action in response to the breach. The State Bar shall have the burden of proving non-compliance by a

³ The Hearing Officer's Report is attached as Exhibit A. The State Bar's costs total \$1,252.50.

preponderance of the evidence.

RESPECTFULLY SUBMITTED this 18th day of August, 2010.

Pamela M. Katzenberg/mps
Pamela M. Katzenberg, Chair
Disciplinary Commission

Original filed with the Disciplinary Clerk
this 18th day of August, 2010.

Copy of the foregoing mailed
this 18 day of August, 2010, to:

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EXHIBIT

A

FILED
JUN 10 2010
HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY: [Signature]

No. 09-1109

HEARING OFFICER'S REPORT

Respondent.

1. Probable cause was found in Count One, 09-1109, on November 18, 2009, and a Complaint was filed on December 4, 2009. This matter was assigned to the undersigned on December 14, 2009. Respondent filed his Response to the Complaint on December 22, 2009. An Initial Case Management Conference was held on December 29, 2009, and a Final Hearing date was set on March 19, 2010. Respondent thereafter retained counsel and his new counsel filed a Motion to Continue the Final Hearing in this matter on March 6, 2010, citing the fact that the Final Hearing was set roughly 10 days hence. Ultimately the Final Hearing was set on April 30, 2010. The matter was then settled and a Notice of Settlement was filed on April 19, 2010. The matter was heard as a hearing on the Agreement and Tender on April 29, 2010.

FINDINGS OF FACT

2. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona, having been first admitted to practice in Arizona on April 28, 1973.¹

COUNT ONE (File No. 09-1109)

Factual Summary

3. By opposing a former client in legal proceedings from which he had not yet withdrawn as the client's attorney, Respondent engaged in conduct that was a violation of the ER's 1.6, 1.8 and 1.9(a). For this misconduct, the parties submit that the appropriate sanction should be a six-month suspension, retroactive to his voluntarily placing himself on inactive status, which occurred on March 8, 2010, and probation.
4. In or about June of 2003, Respondent began representing Lissa Williams ("Ms. Williams") in a divorce from her husband Wayne Williams ("Mr. Williams") in Yavapai County cause no. DO2003-0549.
5. Respondent learned numerous details about Ms. Williams' illicit drug usage and drug usage history during his representation of her.
6. In or about February of 2004, Respondent began engaging in a sexual relationship with Ms. Williams.
7. In or about the same period of time, Respondent developed a father/daughter relationship and began acting as a de facto father to Mr. and Ms. Williams infant daughter.

¹ Unless otherwise cited, the facts set forth herein are taken from the Tender of Admissions agreed to by the parties.

8. The substantive litigation in DO2003-0549 ended in a dissolution of marriage in or about November of 2005.
9. Respondent did not file a Motion to Withdraw, and remained attorney of record for Ms. Williams. If this matter had proceeded to hearing, Respondent would testify that he discussed filing a Motion to Withdraw with Ms. Williams in or about November 2005, but the motion was mistakenly never filed. Moreover, no action occurred in the case after November 2005. Respondent believed that he was no longer Ms. Williams's attorney after November 2005. However, Respondent now recognizes that without an order of withdrawal, he continued to be counsel of record for Ms. Williams.
10. On or about April 13, 2008, Respondent filed a Petition for Custody against Ms. Williams in the same divorce case, DO2003-0549. If this matter were to proceed to hearing, Respondent would have testified that for several months prior to filing the Petition for Custody he had personal dealings with Ms. Williams wherein he became aware of Ms. Williams' then current illicit drug use. In addition, on the evening before filing the Petition for Custody, Respondent received a telephone call from Ms. Williams' adult daughter who suggested strongly that Respondent take action on behalf of the infant daughter. At that time, Respondent believed that the infant daughter was in physical/emotional danger.
11. Respondent was still attorney of record for Ms. Williams in DO2003-0549 at the time he filed his Petition.

12. In his Petition, Respondent sought custody of the infant daughter for himself on a temporary basis until Ms. Williams became sober and able to properly care for the infant daughter.
13. Ms. Williams opposed Respondent's attempt to obtain custody of the infant daughter, and litigation ensued.
14. On or about April 16, 2008, a hearing on Respondent's request for an emergency ex-parte order was held before Judge Rhonda Repp ("Judge Repp").
15. During the hearing, Judge Repp noted that Respondent was still attorney of record for Ms. Williams.
16. Judge Repp ordered Respondent be withdrawn as attorney of record for Ms. Williams. Judge Repp also ordered that Respondent have custody of the minor child on an emergency basis until further hearings could be held.
17. During a later hearing, which occurred after the emergency hearing, before the Honorable Dan Slayton, Respondent testified that he was seeking only temporary custody until such time as Ms. Williams became sober and was able to properly care for her infant daughter.
18. On or about April 26, 2008, Respondent filed an "Affidavit of Evidence of Mother's Drug Use History and Reoccurrence" in DO2003-0549.
19. This Affidavit disclosed and alleged numerous facts about Ms. William's usage of illicit drugs and association with known drug users.
20. At least some of the information contained in the Affidavit was information learned by Respondent during his representation of Ms. Williams in DO2003-0549.

21. On or about May 13, 2008, Respondent filed a formal Motion to Withdraw as attorney of record for Ms. Williams in DO2003-0549.
22. In May 2008, Judge Slayton issued an order granting temporary custody of the minor child to Respondent.
23. By stipulation, Respondent returned custody of the minor child to Ms. Williams in June 2008 because he believed Ms. Williams to be sober and able to properly care for her infant daughter.
24. On or about October 12, 2008, Ms. Williams was arrested and placed in custody for transporting illegal drugs. The infant daughter was in the automobile at the time. Judge Slayton ordered custody return to Respondent in October 2008.
25. The sexual relationship between Respondent and Ms. Williams ended on or about October 12, 2008.
26. In February 2009, Respondent was granted temporary custody by stipulation with Ms. Williams.
27. On or about June 5, 2009, Ms. Williams was released from custody.
28. The litigation between Respondent and Ms. Williams in DO2003-0549 continued until approximately March of 2010, when Respondent and Ms. Williams settled the matter with Respondent and Ms. Williams sharing legal custody, and Ms. Williams retaining primary physical custody.

CONCLUSIONS OF LAW

29. Respondent admits, and this Hearing Officer finds by clear and convincing evidence, that the State Bar would show that Respondent's conduct, as set forth

above, violated the following Rules of Professional Conduct: ERs 1.6, Confidentiality of Information; 1.8, Conflict of Interest; and 1.9(a), Duties to Former Clients. The State Bar dismissed ER 1.7, 3.4 and 8.4(d) violations because of evidentiary issues, and recognition that these evidentiary issues made proof of these violations speculative.

ABA STANDARDS

30. ABA *Standard* 3.0 provides that four criteria should be considered: (1) the duty violated; (2) the lawyer's mental state; (3) the actual or potential injury caused by the lawyer's misconduct; (4) the existence of aggravating and mitigating factors.

The Duty Violated

31. The parties submit, and this Hearing Officer concurs, that the most serious misconduct in this case is Respondent's use of former client information in violation of ER 1.6. This conduct implicates *Standard* 4.22. *Standard* 4.22 provides that "Suspension is generally appropriate when a lawyer knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client." The presumptive sanction in this matter then appears to be suspension.

The Lawyer's Mental State

32. Respondent's mental state was "knowing".

The Injury Caused

33. Because no client funds were involved, nor did Respondent engage in misconduct for pecuniary gain, there is no restitution issue. There was no evidence that Respondent's conduct caused actual injury to his former client, however there was certainly the potential for injury to Ms. Williams.

Aggravating and Mitigating Factors

Aggravating Factors:

34. *Standard 9.22(a)*, Prior disciplinary offenses. Respondent received a 90 day suspension on April 20, 2009, for violation of ERs 1.3, 1.4, 1.5(b), 1.7(a)(2), 3.2(b), 3.4(c), 1.15(d), 1.16(d), 5.3, 5.5, 8.4(d), and Rule 53(f).
35. *Standard 9.22(i)*, Substantial experience in the practice of law. Respondent was admitted on April 28, 1973.

Mitigating Factors

36. *Standard 9.32(b)*, Absence of dishonest or selfish motive. Respondent was acting in what he believed was the best interest of the infant child. The fact that the Court ordered temporary custody to Respondent on two separate occasions, even though he is not the natural father of the child, supports this belief.
37. *Standard 9.32(c)*, Personal or emotional problems. The State Bar interviewed Dr. Karen Sullivan on April 16, 2010. Dr. Sullivan evaluated Respondent in March of 2010 and made findings that would support this mitigator. Dr. Sullivan's report is attached as an exhibit to the hearing, but because of the personal information contained therein has been sealed by this Hearing Officer.

38. *Standard 9.32(e)*, Cooperative attitude towards the disciplinary proceedings. Respondent responded to the State Bar's investigation and fully cooperated throughout the formal litigation.
39. *Standard 9.32(g)*, Character or reputation. Respondent submitted numerous letters attesting to his good reputation for hard work, dedication to his clients and willingness to help his clients even though they could not always pay his fees, as well as assistance and direction to other attorneys.

PROPORTIONALITY REVIEW

40. The Supreme Court has held that one of the goals of attorney discipline should be to achieve consistency when imposing discipline. In order to achieve internal consistency, it is appropriate to examine sanctions imposed in cases that are factually similar, *In re Peasley*, 208 Ariz. 90, 90 P.3d 772 (2004). It is also recognized that the concept of proportionality is "an imperfect process" because no two cases are ever alike, *In re Struthers*, 179 Ariz. to 16, 887 P.2d 789 (1994). It is also the goal of attorney discipline that the discipline imposed be tailored to the individual case and that neither perfection nor absolute uniformity can be achieved, *Peasley*, supra. In this case the State Bar has suggested, and Respondent has accepted, that Respondent receive a six-month suspension retroactive to his voluntarily moving to inactive status on March 8, 2010, and that Respondent be placed on probation for a period of one year concurrent with his existing probation in case 07-1611.

41. The parties submit that the facts of this case are “extremely unique” and therefore there are few comparable cases. The parties submitted the following four cases as “reasonably close” to the conduct in the case at hand, and this Hearing Officer could find no cases any closer to the facts in this case.
42. In *In re Sinchak*, SB-07-0191-D (2008), Sinchak was suspended for six months and one day with two years of probation, MAP & LOMAP. Sinchak failed to give his client competent legal advice and engaged in a conflict of interest in a probate matter by representing both the client and the heirs of the estate. Sinchak filed a petition to be appointed as the Personal Representative and Special Administrator of the deceased’s estate in order to obtain payment of his legal fees. Upon termination, Sinchak failed to protect the client’s interest by not surrendering the client’s file in violation of ERs 1.1, 1.7, 1.9, 1.16 and 8.4(d).
43. In *In re Morgan*, SB-04-0140-D (2005), Morgan was suspended for six months (retroactive) with two years of probation and MAP. She represented clients with whom she had a personal relationship, thereby creating a conflict of interest. Morgan failed to discuss the conflict, advise her clients to seek independent counsel, and failed to obtain a written waiver. She made a false statement to the State Bar during its investigation of this matter. She mishandled her trust account by failing to segregate and protect third party funds. Finally, she pled no contest to shoplifting, a class one misdemeanor in violation of ERs 1.2, 1.3, 1.4, 1.4(b), 1.7, 1.9(a), 1.15, 8.1, 8.4(b) and Supreme Court Rules 43 and 44.
44. In *In re Lenkowsky*, SB-08-0172-D, the Respondent was suspended for 90 days. He revealed confidential information to support an action against his prior client,

and engaged in a conflict of interest, failed to safe-keep client property and charged an unreasonable fee.

45. In *In re Ockrasse*, DC-86-1452-D (1990), Ockrasse was suspended for 90 days. He failed to comply with a request for withdrawal from representation despite a conflict of interest; failed to obtain consent from a client he had formerly defended when subsequently prosecuted the same client in a related matter in violation of ER 1.9.
46. Based on the above cases, the specific facts of this case, the aggravating and mitigating factors, as well as the American Bar Association *Standards for Imposing Lawyer Sanctions*, the parties recommend that Respondent be suspended from the practice of law retroactive to his voluntarily going on inactive status on March 8, 2010, be placed on one year of probation requiring a MAP assessment, and pay all the costs of these disciplinary proceedings.

RECOMMENDATION

47. The purpose of lawyer discipline is not to punish the lawyer, but to protect the public, the profession, the administration of justice and deter future misconduct, *In re Fioramonti*, 176 Ariz. 182, 859 P.2d 1315 (1993), *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985). It is also the purpose of attorney discipline to instill public confidence in the Bar's integrity, *Matter of Horwitz*, 180 Ariz. 20, 881 P.2d 352 (1994).
48. In imposing discipline, it is appropriate to consider the facts of the case, the American Bar Association's *Standards for Imposing Lawyer Sanctions* and the

proportionality of discipline imposed in analogous cases, *Matter of Bowen*, 178 Ariz. 283, 872 P.2d 1235 (1994).

49. As the numerous character letters attest, Respondent has had a long and distinguished legal career helping not only his clients, but other lawyers as well, all without incident until recently when he met Ms. Williams. Respondent's only other disciplinary matter was a 2009 ninety day suspension, which, like the instant case, was caused at least in part by Respondent's association with Ms. Williams.
50. In the case at hand Respondent not only engaged in an inappropriate intimate relationship with Ms. Williams while representing her, he learned certain negative facts about her substance abuse during that representation, which he later used against her in an attempt to secure custody of her child, all while still listed as the attorney of record for Ms. Williams. Respondent was not the father of the child, but had developed a father/daughter relationship with the child.
51. In two separate hearings, two separate judges awarded temporary custody of Ms. William's minor child to Respondent, deeming it in the best interest of the child for Respondent to have temporary custody.
52. Even after Respondent returned the minor child to Ms. Williams' custody in June of 2008, Ms. Williams was, in October of 2008, arrested yet again and placed in custody for transporting illegal drugs while the infant daughter was in the automobile with her. Yet again in October of 2008, Respondent was given temporary custody of the minor child. Ultimately, in March of 2010, Respondent and Ms. Williams settled the matter with Respondent and Ms. Williams sharing

legal custody, and Ms. Williams retaining primary physical custody of the minor child.

53. It must be made clear that Ms. Williams' shortcomings and deficiencies as a parent cannot excuse Respondent's violation of the attorney-client relationship in multiple aspects. Not only did the Respondent have an inappropriate intimate relationship with his client while representing her, he obtained confidential information from her, which he then later used against her in an effort to take custody of her minor child from her.
54. It is clear to this Hearing Officer that Respondent's motives were to try and protect the minor child rather than simply hurt Ms. Williams. While his motive might have been appropriate, by first engaging in an intimate relationship with Ms. Williams, and then turning the confidential information he had learned from Ms. Williams against her, Respondent placed himself in a morally compromised position from which he could not extricate himself. Not only does this case bear out the reason why we have rules against this kind of a relationship between an attorney and his client, it shows how the best of motives can be tainted by inappropriate behavior.
55. This Hearing Officer had an opportunity at the hearing on the proposed agreement to examine the Respondent at some length. What this Hearing Officer found was a broken, depressed, and very sad individual. Respondent recognizes the errors that he has committed and takes full responsibility for them. He recognizes how his good intentions in trying to help the minor child are marred by the fact that he used bad judgment and violated his ethical duty to his client. The report of the

psychologist submitted on behalf of the Respondent addresses in more detail some of the issues in Respondent's personality which contributed to Respondent's negative behavior.

56. If there is a glimmer of hope here, and this Hearing Officer finds that there is, it is the fact that Respondent has stepped forward to try to assist a young child when others would not, and that he voluntarily continues to this day in this responsibility which is not his. Respondent seems to have an understanding and self-awareness of how he started down this long and torturous path, the errors that he made along the way, and appears to have the resolve to make sure that he does not repeat these mistakes again. Prior to the time that Respondent began representing Ms. Williams Respondent had an outstanding reputation and 30 year history of contributing to the betterment of the profession and the public. It is hoped that the lessons learned in these proceedings will help Respondent reset his moral compass and get back to being the lawyer that he once was.
57. Upon consideration of the facts, application of the *Standards*, including aggravating and mitigating factors, and a proportionality analysis, this Hearing Officer recommends the following:
1. Respondent shall receive a suspension of six months, retroactive to his voluntarily placing himself on inactive status, which occurred on March 8, 2010;
 2. Respondent shall be placed on probation for a period of one year, concurrent with Respondent's existing probation in case 07-1611 et. al., under the following terms and conditions:

- A) The term of probation shall begin at the time of the Final Judgment and Order and shall end one year from the Final Judgment and Order.
 - B) Respondent shall contact the director of the State Bar's Members Assistance Program ("MAP") within 30 days of the date of the Final Judgment and Order. Respondent shall submit to a one time MAP assessment to determine his need for any services and/or assistance. If deemed necessary by MAP, the director of MAP shall develop "Terms and Conditions of Probation" and the terms shall be incorporated herein by reference. Respondent shall be responsible for any costs associated with MAP.
 - C) In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof is received by the State Bar of Arizona, Bar Counsel shall file a Notice of Noncompliance with the imposing entity, pursuant to Rule 60(a)(5), Ariz.R.Sup.Ct.. The imposing entity may refer the matter to a Hearing Officer to conduct a hearing at the earliest practicable date, but in no event later than 30 days after receipt of notice, to determine whether a term of probation has been breached and, if so, to recommend an appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.
3. Pursuant to Rule, Respondent shall pay all costs incurred by the State Bar in bringing these disciplinary proceedings within 30 days of the Supreme Court's

Final Judgment and Order. In addition, Respondent shall pay all costs incurred by the Disciplinary Commission, the Supreme Court, and the Disciplinary Clerks office in this matter.

DATED this 10th day of June, 2010.

H. Jeffrey Coker / Leahy D'Amore
H. Jeffrey Coker, Hearing Officer

Original filed with the Disciplinary Clerk
this 10th day of June, 2010.

Copy of the foregoing mailed
this 14 day of June, 2010, to:

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by: Deann Baker

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